

**REMARKS**

This paper is submitted in response to the First Office action. Reconsideration and favorable action are respectfully requested.

In the first instance, the various claim rejections (paragraphs 2-5, pages 2-9) do not mention claim 42 explicitly. As the Office bears the initial burden of establishing that a given claim is not patentable, it is respectfully submitted that, on the present record, claim 42 should be deemed allowable.<sup>1</sup>

With respect to the substance of claim 42, it is further submitted that any formal rejection of this claim (were the Examiner to consider doing so) cannot stand. The cited prior art consists of the Genesys product descriptions, together with “known third party reporting tool[s], such as Microsoft Excel.” In the first instance, the Examiner’s reliance on the alleged properties or characteristics of “third party reporting tools” such as Excel is hearsay. Even if Excel has the capabilities expressed, the Examiner must establish that such capabilities existed early enough (relative to the application filing date) and distinctly enough (so that the alleged art is consistent in scope with the applicable claim limitation). Without such a showing, the reliance of “known third party reporting tools” (emphasis supplied) is legally insufficient to support any potential obviousness rejection of claim 42. Stated another way, *prima facie* obviousness cannot be established by a conclusory statement that this or that product (in this case, Microsoft Excel) had this or that feature; if that were legal standard, almost any claim limitation could be attacked as “known” in the prior art using a similar type of argument. Here, the actual wording of claim 42 describes subject matter that is well beyond what any “known third party reporting tool” (such as Excel) does (emphasis supplied):

determining whether the percentage difference between each of the one or more performance statistics of the peer group and the respective performance statistic of the agent *exceeds an over threshold*;

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<sup>1</sup> The undersigned acknowledges that dependent claims 43-45 have been identified as unpatentable under 35 U.S.C. § 103(a) (page 5), although the Examiner has provided only conclusory reasons in support of the rejection. Admittedly, this rejection implies that claim 42 has been rejected, but the Action does not reflect this.

*presenting the respective performance statistic of the peer group in a first state in response to a determination that the percentage difference between the respective performance statistic of the peer group and the performance statistic of the agent exceeds the over threshold;*

determining whether the percentage difference between each of the one or more performance statistics of the peer group and the respective performance statistic of the agent is *less than an under threshold*; and

*presenting the respective performance statistic of the peer group in a second state in response to a determination that the percentage difference between the respective performance statistic of the peer group and the performance statistic of the agent is less than the under threshold.*

Accordingly, independent claim 42, taken as a whole, is neither anticipated nor obvious in view of the cited art. Dependent claims 43-45 are likewise patentable.

As to newly presented independent claims 68, 81 and 86, the Examiner will note that these claims each describe “displaying the given agent’s performance statistic and the performance statistic for one or more other agents in the agent’s group for the at least one daily period, wherein the performance statistics are displayable for the given agent and the one or more other agents in the agent’s group by one or more views: *on a cumulative basis across all skills and contact types, according to a given skill that the given agent possesses, and according to a given contact type handled by the given agent.*”

The cited art (describing the Genesys Agent Pulse product) simply describes allowing call center agents to “monitor their individual performance in real time as well as compare it to that of their group.” The amended claims, however, describe a new and non-obvious enhancement to this known technique whereby a given entity (e.g., an agent, his or her supervisor, or some other person) is provided with the agent’s performance statistic (e.g., “In Calls”) in one or more related views: on a cumulative basis across all skills and contact types, according to a given skill that the given agent possesses (e.g., “Spanish Speaking”), and according to a given contact type handled by the given agent (e.g., “Texas Sales”). One embodiment of the display methodology is illustrated in Figure 5A, reproduced below:

|                      |     |     | In Calls |
|----------------------|-----|-----|----------|
| 06:17:39 Totals      |     |     | 88       |
| 526                  | 528 | 526 | 83       |
| MU                   |     |     | 78       |
| (S) Spanish Speaking | 530 |     | 52       |
| 532                  |     |     | 48       |
| MU                   |     |     | 45       |
| (Q) Texas Sales      | 534 |     | 4        |
| 542                  |     |     | 10       |
| MU                   |     |     | 8        |

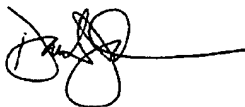
As can be seen, the first three (3) rows illustrate the given agent's performance statistic with respect to that of his or her agent group and management unit on the cumulative basis, the next three (3) rows illustrate a similar comparison for a given skill (in this case "Spanish Speaking"), and the final three (3) rows illustrates the comparison for a given contact type (in this case "Texas Sales"). Each new independent claim now positively recites that the given agent's performance statistic is displayable along with the statistic for at least an agent group (for at least one daily period) in one or more of the three views, namely, cumulatively across all skills and contact types, by skill, or by contact type. No such functionality is remotely described or suggested by the Genesys prior art of record. Moreover, as noted above, it is legally insufficient to argue that the "known third party" tools include the additional recited functionality unless they in fact do, and this record is devoid of any such teaching. Further, even if "known third party" tools do include basic display functions, the Office cannot make out a case of *prima facie* obviousness unless one of ordinary skill would have been motivated to modify Genesys to provide agent performance statistic displays "*on a cumulative basis across all skills and contact types, according to a given skill that the given agent possesses, and according to a given contact type handled by the given agent.*" The references themselves do not suggest any such modification; thus, any conclusion that the claimed subject matter would have been obvious to one of ordinary skill is an impermissible hindsight reconstruction of the claimed invention. For this reason, each of the new independent claims 68, 81 and 86 describe patentable subject matter.

In like manner, Claim 66 has been amended to recite this particular display functionality.

Each of dependent claims 7 and 12-22 has been amended so that the language therein confirms to independent claim 68. Each of independent claims 66, 68, 81 and 86 now recited patentable subject matter, as do their respective dependent claims. For these reasons, a Notice of Allowance is respectfully requested.

An appropriate extension of time is submitted herewith to extend the period for response up to and including June 6, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "David H. Judson", with a long horizontal line extending to the right.

By: \_\_\_\_\_

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**ATTORNEY FOR APPLICANTS**